

## **Appendix A: BHITS Subcontractor Representations Provisions**

**TYPE OF CONTRACT:** Firm Fixed Price (FFP)

**PRIME CONTRACT:** Prime Contract No. HHSN316201200139W  
Task Order No. HHSS270201400001W  
Issued by: DHHS, SAMHSA  
U.S. Department of Health & Human Services  
Substance Abuse and Mental Health Services Administration (SAMHSA)  
Behavioral Health Information Technologies and Standards (BHITS)

Issued to: FEi.com, Inc.  
7175 Columbia Gateway Drive, Suite A  
Columbia, MD 21046-2534

### **REPRESENTATIONS AND WARRANTIES**

#### **3.1 ORGANIZATIONAL CONFLICTS OF INTEREST**

- A.** Subcontractor is aware of no known actual or perceived conflicts of interest (as defined in FAR 9.5), or any other fact, circumstance or condition that would delay or interfere with its ability to perform the work contemplated under the Agreement. As a condition of award, Subcontractor agrees to avoid any actual or perceived conflict of interest during the term of this Agreement. Subcontractor agrees to immediately disclose to FEi Systems, any actual or perceived conflict of interest that may arise as a result of its involvement in this Agreement. The provisions of this clause shall survive expiration or termination of this Agreement.
- B.** The Subcontractor shall use the Client financed resources provided through this Subcontract (including personnel, equipment and facilities) only for activities directly related to fulfilling the scope of work and objectives of the Subcontract and Prime Contract. The Subcontractor shall avoid both the reality and the appearance of any conflict of interest. The guidelines and procedures of FAR Subpart 9.5 will be used in identifying and resolving any issues of organizational conflict of interest.

#### **3.2 INFRINGEMENT OF CERTAIN RIGHTS**

Subcontractor warrants that during the performance of this Subcontract, it will not infringe the copyright, patent, or other property rights of any other person and Subcontractor agrees to defend, indemnify, and hold harmless FEi Systems and the Client from any and all liability which may arise from breach of this warranty.

#### **3.3 SECURITIES TRADING**

To the extent that Subcontractor receives material, non-public information about any company in the course of performing this Subcontract, Subcontractor or any of its personnel or consultants will not disclose that information to any person, and shall refrain from purchasing or selling any security issued by that company until the information becomes public.

### **3.4 COMPLIANCE WITH LAW**

Subcontractor warrants its compliance with all laws and regulations governing performance of this Subcontract.

### **3.5 DEBARMENT OR SUSPENSION**

Subcontractor warrants that, as of the time of award of this Subcontract, neither the Subcontractor nor any of its principals are debarred, suspended, or proposed for debarment or suspension by the United States Government.

### **3.6 PROCUREMENT INTEGRITY**

The Subcontractor warrants that (1) it neither solicited nor obtained bid or proposal information or source selection information related to the Prime Contract prior to its award, and (2) it has not offered employment, compensation, or anything of value to a current or former U.S. Government Procurement Official who participated personally and substantially in the Prime Contract award or any modifications of the Prime Contract.

### **3.7 PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS**

The provisions of FAR 52.203-11, entitled “Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions” are hereby incorporated by reference.

### **3.8 EQUAL EMPLOYMENT OPPORTUNITY**

In connection with the performance of work under this Subcontract, the Subcontractor agrees not to discriminate against any employee or applicant for employment because of race, sex, color, religion, age or national origin. The Subcontractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, sex, color, religion, age, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Subcontractor further agrees to insert the foregoing provisions in all lower-tier subcontracts made in connection with the services called for under this Subcontract.

### **3.9 EXECUTIVE ORDER ON TERRORISM FINANCING**

The Subcontractor is reminded that U.S. Executive Orders and U.S. law prohibits transactions with, and the provision of resources and support to, individuals and organizations associated with terrorism. It is the legal responsibility of the Subcontractor to ensure compliance with these Executive Orders and laws. This provision must be included in all lower-tier subcontracts/subawards issued under this Subcontract.

### **3.10 STANDARDS OF CARE**

Subcontractor warrants that the services provided under this Subcontract will be free from defects in material and workmanship and will meet the requirements of this Subcontract; that Subcontractor's personnel are qualified to perform the services; and that the services performed will conform with industry standards for the types of services provided. Upon written notice to Subcontractor, Subcontractor agrees to correct or re-perform any services not in compliance with this standard to the satisfaction of FEi Systems, at no additional fee. This provision will survive expiration or termination of this Subcontract.

### **3.11 COMPLIANCE WITH VETERANS EMPLOYMENT REPORTING REQUIREMENTS (For Subcontracts Valued at \$100,000 or more)**

The Subcontractor represents that, if it is subject to the reporting requirements of 38 U.S.C. 4212(d) (i.e. the VETS-100 report required by the Federal Acquisition Regulation Clause 52.222-37, Employment Reports on Disabled Veterans and Veterans of the Vietnam Era), it has \_\_\_ has not \_\_\_ submitted the most recent report required by 38 U.S.C. 4212(d). See [www.vets100.com](http://www.vets100.com).

### **3.12 RESERVED**

### **3.13 COMPLIANCE WITH REQUIRED AFFIRMATIVE ACTION ACTIVITIES**

This contractor and subcontractor shall abide by the requirements of 41 CFR 60–300.5(a). This regulation prohibits discrimination against qualified protected veterans, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans.

This contractor and subcontractor shall abide by the requirements of 41 CFR 60– 741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.

FEi Systems is committed to the principles of equal employment opportunity and non-discrimination. FEi.com endeavors to comply with all applicable laws, regulations, and Executive Orders.

FEi Systems prohibits discrimination based on any protected status and provides equal employment opportunity to all employees and applicants without regard to an individual's protected status including race/ethnicity, color, national origin, ancestry, gender, sexual orientation, religion, creed, age, disability, veteran status, or any other protected status.

As a federal government contractor, in accordance with applicable laws, regulations, and Executive Orders, FEi Systems is required to develop an annual written Affirmative Action Plan (AAP). The company is committed to employ and advance in employment qualified minorities, women, individuals with disabilities, and covered veterans. FEi Systems requests that the subcontractor commit to appropriate action on its part in regards to these policies.

## **GENERAL PROVISIONS**

### **4.1 RELATIONSHIP TO CLIENT**

It is understood and agreed by the parties that no contractual relationship is established between the Client and Subcontractor by reason of this Subcontract. All authorizations required from the Client shall be obtained through FEi Systems, and all communications intended for the Client shall be handled through FEi Systems.

### **4.2 TECHNICAL DIRECTION**

Performance of the work under this Subcontract shall be subject to the technical direction of the FEi Systems Project Manager, or designee. Such direction may include:

1. Prescribing the details of the Statement of Work and assisting in the resolution of logistical problems.
2. Monitoring technical progress and performing technical evaluation of performance.
3. Performing technical inspection and acceptance, in accordance with FAR Clause 52.246-4-- (Inspection of Services – Fixed Price).

### **4.3 CHANGES**

The FEi Systems Contracting / Subcontracting Officer has the authority to modify the Subcontract subject to FAR 52.243-1 (Changes – Fixed Price). All modifications must be in writing and signed by said FEi Systems Contracting / Subcontracting Officer or representative and an authorized representative of the Subcontractor. No change order shall bind FEi Systems or the Subcontractor unless issued in this manner and in accordance with FAR 52.243-1 (Changes - Fixed Price), which is incorporated by reference herein subject to the modifications set forth in Article 4.17, and the following: the term "30 days" in paragraph (c) is changed to "15 business days."

If the Subcontractor at any time believes that any technical direction constitutes of a change in the scope of work that would affect the terms of the Subcontract, it shall immediately seek clarification, in writing, from the FEi Systems Contracting / Subcontracting Officer. FEi Systems shall not be liable for any costs incurred for such changed work unless the change is issued in writing according to the procedures set forth in this Article. Failure to give prompt notification of changes shall waive the Subcontractor's right to any claims for equitable adjustments as described in FAR Clause 52.243-1 (Changes – Fixed Price).

FEi Systems may direct the Subcontractor to stop work in accordance with FAR Clause 52.242-15 (Stop Work Order) which is incorporated herein by reference subject to the modifications set forth in Article 4.17, and the following: the term "30 days" in paragraph (b)(2) is changed to "15 business days". Total compensation to the Subcontractor shall not exceed costs incurred prior to the stop work order, contingent upon full reimbursement to FEi Systems by the Client for those costs.

### **4.4 NOTICE OF DELAYS**

Time is of the essence. Whenever Subcontractor knows or has reason to know that any actual or potential situation is delaying or threatens to delay the timely performance of the work required hereunder,

Subcontractor shall immediately provide written notice thereof to the FEi Systems Contracting / Subcontracting Officer and Project Director including all relevant information with respect thereto.

Any such notice shall be informational only and receipt thereof by FEi Systems shall not constitute a waiver by FEi Systems of the delivery schedule, or any of FEi Systems' rights or remedies hereunder.

#### **4.5 NON-ASSIGNMENT AND LOWER-TIER SUBCONTRACTING**

Subcontractor shall not assign this Subcontract or sublet or subcontract the work or assign the right to receive any payments coming due hereunder without prior written consent of FEi Systems, and FEi Systems' consent to such assignment or Subcontract shall not relieve the Subcontractor of any liability for the full and complete performance of this Subcontract.

#### **4.6 TERMINATION**

This Subcontract may be terminated in whole or in part by FEi Systems at any time during the period of its performance in accordance with FAR 52.249-2 (Termination for Convenience—Fixed Price) which is incorporated herein by reference subject to the modifications set forth in Article 4.17.

In the event of termination, FEi Systems shall have the right to take possession of and finish any incomplete work by such means as it sees fit.

The rights and remedies of FEi Systems in this clause are in addition to any other rights and remedies provided by law or under this Subcontract.

Except as otherwise provided herein, this Agreement shall expire upon: 1) expiration of the subcontract term as defined in section 2.3 of this Subcontract agreement, or 2) written mutual agreement signed by both parties.

#### **4.7 INDEMNIFICATION AND INSURANCE**

- A. Each party** shall defend, indemnify and hold harmless the other party, its officers, agents, employees, and/or assignees against any liability, claim, damage, suit, or expense (including reasonable attorney fees) claimed against or incurred by the other party based upon or arising out of: (a) each party's and/or its agents' or employees' infringement or misuse of a patent, copyright, trademark, or other intellectual property right; (b) the personal injury, bodily injury, death, or any other damage to person or property caused by each party's and/or its agents' or employees' negligent acts and/or omissions and/or willful misconduct; (c) each party's and/or its agents' or employees' fraud, willful misrepresentation, and/or criminal conduct; (d) each party's and/or its agents or employees' noncompliance with applicable laws or regulations; (e) each party's and/or its agents' or employees' defective cost or pricing data, or noncompliance with applicable cost accounting standards; (f) each party's and/or its agent's failure to compensate, or comply with any applicable labor standards with respect to each party's employees; and/or (g) each party's breach of this Subcontract, or any provision, representation or warranty contained in this Subcontract. The provisions of this section shall survive expiration or termination of this Subcontract.

- B. In no event shall either party, its affiliates and/or employees or agents be liable, whether in contract, warranty or tort (including negligence or strict liability) for any special, indirect, consequential, multiple or punitive damages of any nature arising out of or in connection with this Subcontract.
- C. The Subcontractor shall, at all times during the period of performance of this Subcontract, carry the following amounts of insurance:
  - 1. Commercial General Liability for Bodily Injury and Property Damage in an amount no less than \$1,000,000 per occurrence
  - 2. Workers Compensation and/or Employer's Liability in accordance with the laws of the governing jurisdiction.
  - 3. Any other insurance coverage required by law.

Upon request, the Subcontractor shall provide FEi Systems with evidence of the above coverages, either in the form of a Certificate of Insurance or copies of the policies. Subsequent to the renewal of such insurances, the Subcontractor shall provide evidence upon request of the renewal of coverage.

#### **4.8 INFORMATION AND DATA**

- A. Except as provided below, the Receiving Party agrees that all information and data provided by the Disclosing Party to the Receiving Party will: (1) be used by the Receiving Party only for purposes of Receiving Party performance; and (2) not be disclosed to any person except the Receiving Party's employees or agents who need such information and data in order to perform the Receiving Party; and (3) be protected by the Receiving Party through implementation of procedures sufficient to prevent disclosure. The foregoing sentence shall not prevent use or disclosure of information and data which are: (1) in the public domain or publicly known through no fault of the Receiving Party; (2) approved for use or disclosure by the Disclosing Party Contracting / Subcontracting Officer in writing; or (3) required to be disclosed by a court of competent jurisdiction; (4) independently developed by the Receiving party without the benefit or use of the Confidential Information furnished by the Disclosing Party; (5) obtained from a third party who to the knowledge of the Receiving Party, received the Confidential Information without any restriction on its further disclosure; (6) known to the Receiving Party prior to receipt of such information from the Disclosing Party.
- B. The Subcontractor shall not publish or otherwise discuss, except to FEi Systems or to the Client, any reports, data, or information generated or obtained under promise of confidentiality in the course of performing this Subcontract.
- C. In the event the Subcontract requirement to collect identical information from 10 or more public respondents, the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. shall apply to the Subcontract and Subcontractor shall not expend funds or make any contacts for the collection of data from public respondents until written approval has been received from FEi Systems.
- D. The Client and/or FEi Systems shall have an unrestricted right to publish all reports, non-confidential information and data resulting from performance of this Subcontract. In any such publications, authorship credit shall be given to the Subcontractor in a manner consistent with the degree of authorship or contribution.

- E.** If it is established that information to be utilized under this Subcontract is subject to the Privacy Act, the Subcontractor will follow the rules and procedures of disclosure forth in the Privacy Act of 5 U.S.C. 552a, and implementing regulations and policies, with respect to systems of records determined to be subject to the Privacy Act.
- F.** Rights in data produced or delivered in the performance of this Subcontract shall be determined by *FAR Clause 52.227-17 (Rights in Data-Special Works)*, which are incorporated by reference in this Subcontract, subject to the modifications set forth in Article 4.17
- G.** The provisions of this section shall survive expiration or termination of this Subcontract. Subcontractor shall include the substance of this section in any lower-tier Subcontract.
- H.** IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY LOST PROFITS, LOST SAVINGS, CONSEQUENTIAL, INCIDENTAL, OR SPECIAL DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. DIRECT DAMAGES NOT LIMITED BY THIS CLAUSE INCLUDE BUT ARE NOT LIMITED TO (I) ANY CLAIM FOR REPROCUREMENT COSTS; (II) ANY CLAIM FOR "OFFSET" BROUGHT PURSUANT TO THE PROVISIONS OF THE FEDERAL ACQUISITION REGULATIONS AND (III) ANY CLAIM FOR ADMINISTRATIVE OR CIVIL FALSE CLAIMS REMEDIES.

#### **4.9 WITHHOLDING OF SUBCONTRACT PAYMENTS**

Notwithstanding any other payment provisions of this Subcontract, failure of the Subcontractor to submit required reports when due, or failure to perform or deliver required work or services, may result in the withholding of fee payments under this Subcontract, unless such failure arises out of causes beyond the control, and without the fault or negligence of the Subcontractor as defined by FAR 52.249-14 (Excusable Delays). FEi Systems shall promptly notify the Subcontractor of its intention to withhold fee payment of any invoice/voucher submitted prior to the withholding of payment and after the dispute process.

#### **4.10 DISPUTES**

(A) "Dispute" as used herein shall mean any and all claims or disputes that in any way arise out of or relate to this Subcontract, the negotiation or execution thereof, its performance, or the breach or enforcement thereof. FEi Systems and Subcontractor intend that the definition of "Dispute" shall have the broadest scope permitted by law and that, without limiting the generality of the foregoing, shall be deemed to include all claims between the parties including, but not limited to, any claims for fraud, misrepresentation, negligence, libel and slander, unfair competition, unfair trade practices, or other tort law claims.

##### **(B) DISPUTES UNDER OR RELATED TO PRIME CONTRACT**

(1) Except for changes identified as such in writing and signed by the FEi Systems, the Subcontractor shall notify FEi Systems, in accordance with the Notices provisions of this Subcontract, in writing promptly, within thirty (30) calendar days from the date that the Subcontractor identifies any conduct (including actions, inactions, and written or oral communications) on the part of FEi Systems that Subcontractor regards as a change to or inconsistency with the contract terms and conditions.

(2) Notwithstanding the previous paragraph, any Dispute arising under or related to this Subcontract, which FEi Systems could include in a claim or other demand under the disputes provisions of the prime contract shall be resolved in accordance with subparagraph (3) and as follows: (i) Subcontractor shall provide FEi Systems with a fully supported written claim, properly certified as prescribed by FAR 33.207, within ninety (90) calendar days after the claim accrues; (ii) Subcontractor shall cooperate with FEi Systems in prosecuting Subcontractor's timely made claim or demand and will be bound by the resulting decision of the Contracting Officer; and (iii) Subcontractor shall pay its proportional costs in pursuing the claim. If Subcontractor fails to provide FEi Systems with a written claim for any Dispute within the time frame prescribed hereunder, Subcontractor is deemed to have waived the claim.

(3) FEi Systems' entire liability to Subcontractor with respect to any matter prosecuted under the prime contract disputes clause shall be limited to the recovery obtained against the Government (or higher tier contractor, if applicable) for Subcontractor's claim, exclusive of

FEi Systems' related markups. If Subcontractor is affected by the resulting decision and FEi Systems elects to appeal, Subcontractor shall pay to FEi Systems Subcontractor's proportion of the appeal costs. If FEi Systems elects not to appeal the decision, FEi Systems shall notify Subcontractor of that decision within thirty business (30) days. If Subcontractor submits a timely request to FEi Systems to appeal such decision, FEi Systems shall, if FEi Systems may do so in good faith, file and sponsor Subcontractor's appeal, at Subcontractor's sole cost. FEi Systems has the right to review, prior to submission, any pleadings or other papers Subcontractor may file in such appeal. Subcontractor agrees to delete any admissions or statements in the pleadings or papers to which FEi Systems objects. If FEi Systems appeals such decision, whether or not at Subcontractor's request, any decision regarding such appeal shall be binding on FEi Systems and Subcontractor as it relates to this Subcontract. The choice of law specified in the prime contract shall not apply to Disputes and appeals prosecuted under the prime contract.

(4) Until final resolution of any Dispute hereunder, Subcontractor shall proceed diligently with the performance of this Subcontract unless otherwise directed by FEi Systems in writing.

### (C) OTHER DISPUTES

(1) The parties acknowledge and agree that the Disputes procedures set forth in this paragraph are a fair and reasonable means of resolving any and all disputes (other than disputes under the above Section 4.10 (B)) that may arise between them and that neither party has fraudulently or unfairly induced or coerced the other to agree to the procedures. **THE PARTIES HAVE THE RIGHT TO LITIGATE THROUGH A COURT AND TO HAVE A JUDGE DECIDE THEIR CASE**

(2) Until final resolution of any Dispute hereunder, Subcontractor shall proceed diligently with the performance of this Subcontract unless otherwise directed by FEi Systems in writing.

(3) FEi Systems' rights under the terms and conditions of this Subcontract are cumulative and in addition to any other rights available at law or equity.

(4) This provision is not applicable to, and does not in any way limit any remedies available to a party with respect to, any dispute between either party to this Agreement and a third-party.



(5) All applicable statutes of limitations and defenses based upon the passage of time shall be tolled while the other Disputes procedures (including the good faith negotiations) specified in this article are pending. The parties will take necessary action that is required to effectuate such tolling.

#### **4.11 GOVERNING LAW**

This agreement shall be deemed to be a Subcontract made under, governed by, and construed in accordance with the laws of the State of Maryland. Claims by either party under this Subcontract shall be decided under the laws of the State of Maryland.

#### **4.12 INDEPENDENT CONTRACTORS**

Nothing contained in the Subcontract shall be construed to create a joint venture or partnership between the parties. Subcontractor is an independent contractor and is neither an agent nor employee of FEi Systems.

#### **4.13 SEVERABILITY**

If any provision of this Subcontract shall be determined by any court of competent jurisdiction to be invalid or unenforceable, the remainder of the Subcontract other than the portions determined to be invalid or unenforceable shall not be affected thereby, and each valid provision hereof shall be enforced to the fullest extent permitted by law.

#### **4.14 NO WAIVER**

Failure to insist upon strict compliance with any of the terms, covenants, and conditions hereof shall not be deemed a waiver of such terms, covenants, or conditions, nor shall any waiver or relinquishment of any right or power hereunder at any one time or more times be deemed a waiver or relinquishment of such right or power at any other time or times.

#### **4.15 ORDER OF PRECEDENCE**

Any inconsistency in this Subcontract shall be resolved by giving precedence in the following order: (1) FAR clauses and other Prime Contract provisions which, by their terms or by operation of law, are required to be incorporated in the Subcontract; (2) narrative Subcontract provisions; (3) FAR clauses incorporated in the Subcontract by reference except those encompassed by (1) above; (4) Prime Contract provisions incorporated in the Subcontract by reference except those encompassed by (1) above; and (5) exhibits and attachments to the Subcontract.

#### **4.16 RIGHTS TO INVENTIONS**

Unless otherwise agreed in writing by the parties, any inventions arising during the term of the Agreement shall be the property of the originating party. In the event of joint inventions, the parties shall each have an undivided, one-half interest in and to such jointly developed inventions. If a party files for a patent for any such invention, the other party shall pay one-half of all related patent filing and prosecution fees, including attorneys' fees, or it shall forfeit its interest in such invention and patent and shall assign its rights in the invention to the party filing for the patent. The parties agree to abide by provisions in the

Prime Contract that may require the parties to grant license or other rights in the inventions and patents and associated data to the Government.

#### **4.17 CHANGES**

Any changes shall be in accordance with FAR 52.243-1, Changes – Fixed Price, except that: a) as used in this clause Contractor shall be defined as Seller and Contracting Officer shall be defined as FEI Systems' Contractual Representative; and b) Seller shall assert its right to an adjustment under this clause within 20 days from the date of receipt of the written order. Failure to agree to any adjustment will be a dispute under the Disputes clause of this Subcontract, provided, however, that nothing in this clause excuses the Seller from proceeding with the work as changed without interruption and without awaiting settlement of any such dispute.

#### **4.18 PROVISIONS INCORPORATED BY REFERENCE**

In addition to the clauses incorporated by reference elsewhere in the Subcontract and appropriate Prime Contract clauses are hereby made a part of this Subcontract by reference and are applicable to it with the following modifications:

- A. The term "Secretary" means "the FEI Systems President" or his authorized representative.  
The term "Contract" means "Subcontract."  
The term "Contracting Officer" means "FEI Systems Contracting / Subcontracting Officer."  
The term "Project Officer" means "FEI Systems Project Manager."  
The term "Contractor" means "Subcontractor."  
The terms "Government" or "Client" means "FEI Systems"  
The term "Subcontract" means "lower-tier Subcontract."
- C. Clauses incorporated by reference have the same force and effect as if they were given in full text.

#### **4.19 ENTIRE AGREEMENT**

This Subcontract, together with all attachments and incorporated provisions, shall constitute the entire agreement of the parties, and supersedes all previous and contemporaneous agreements or representations, whether written or oral, with respect to the deliverables and services specified herein.

-END-